

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ALMA R.,

Claimant,

OAH No. 2006030813

vs.

EASTERN LOS ANGELES REGIONAL  
CENTER

Service Agency.

**DECISION**

Administrative Law Judge Deborah Myers, State of California, Office of Administrative Hearings, heard this matter in Alhambra, California on May 25, 2006.

Claimant was represented by her mother, Alma R.

Felipe Hernandez, Chief of Consumer Services, represented the service agency.

The matter was submitted on May 25, 2006.

**PARTIES AND JURISDICTION**

Claimant makes a claim for services pursuant to Welfare and Institutions Code section 4512. She is appealing from the Service Agency's denial of her request for eligibility for services.

All pre-hearing jurisdictional requirements have been met. Jurisdiction for this proceeding exists.

**ISSUE**

1. Whether Claimant qualifies for services under the Lanterman Act.

## FACTUAL FINDINGS

1. Claimant is 10 years, six months old. She lives at home with her parents. She is in 5<sup>th</sup> grade at Pasadena Unified School District, where she attends general education classes with special education services provided one-half hour a day, four days a week by an Resource Specialist Program (RSP) teacher who assists with reading comprehension, written expression and listening comprehension. In April 2006, Claimant began receiving special education services because of a diagnosis of Other Health Impairment-Attention Deficit Hyperactivity Disorder (ADHD).

2. Claimant was diagnosed with epilepsy at age two years. Over the years, her neurologist treated her with a series of anti-seizure medications but was unable to control Claimant's seizures. In February 2005, Claimant underwent a left temporal lobectomy to reduce her seizures; the operation was successful. Post-surgery, Claimant was monitored with a prolonged video EEG monitor, which demonstrated no seizure activity during that study. Claimant has been seizure-free since the surgery, although she continues to take low doses of anti-seizure medication. California Children's Services assists Claimant with these medical issues, including the payment of her medical bills.

3. Claimant has a history of ADHD and was diagnosed with a learning disorder, not otherwise specified (Exhibit 8). On November 3, 2005, she was tested and evaluated by Dr. Larry Gaines, Ph.D. On the Wechsler Intelligence Scale for Children-IV, Claimant's scores ranged from low average to above average learning abilities. She exhibited weaknesses in verbal comprehension, average performance in nonverbal processing and learning, and above average performance for her working memory. Claimant's scores did not establish that she had sub-average intellectual functioning which is associated with Mental Retardation.

4. On the Vineland Adaptive Behavior Scales, Claimant's language skills placed her within the low-average range of performance. Her adaptive behavior skills scored on the average range of performance. Claimant's social skills fell within the average range of performance. There was no indication that Claimant suffered any significant impairments in her daily living skills.

5. On the Wide Range Achievement Test-III, Claimant scored within the average range of ability for reading, the above average range of ability for spelling, and the superior range of ability for arithmetic. There was no discrepancy between Claimant's ability and her achievement, which might have indicated a specific learning disability.

6. Dr. Gaines concluded that Claimant functioned within normal developmental limits in all developmental domains. He diagnosed her as having a learning disorder, not otherwise specified.

7. On November 3, 2005, prior to Claimant's assessment for special education, an assessment coordinator from the Service Agency performed a psychosocial assessment on Claimant. He evaluated her Motor, Independent Living, Social, Emotional, Cognitive, Communicative, and Vocational/Educational Domain. With the exception of Claimant's difficulty in completing school assignments and propensity for becoming easily distracted, there were no other impairments to her current levels of functioning.

8. Claimant's special education assessment was not in evidence at the administrative hearing. On March 13, 2006, Claimant's RSP teacher, Ms. Burke, prepared a Teacher Summary Report. Ms. Burke observed Claimant's difficulty processing language when reading and listening, which she believed hindered Claimant's performance in all language arts activities. Ms. Burke noted that Claimant had difficulty understanding what she read and applying it to the related oral and written expression activities. Ms. Burke recommended that Claimant receive RSP services to assist her in the areas of reading comprehension, written expression and listening comprehension. Ms. Burke did not observe any impairments in Claimant's daily living skills. An initial IEP was conducted on the same day to address Claimant's special education goals.

9. No evidence was presented to establish that claimant suffered from Autism, Cerebral Palsy, or a condition similar to Mental Retardation.

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Act, Welfare and Institutions Code (WIC) section 4500 et seq., the State of California accepts responsibility for persons with developmental disabilities.<sup>1</sup> As defined in the Act, a developmental disability is a disability that originates before age 18, that continues or is expected to continue indefinitely, that constitutes a substantial disability for the individual, and that is attributable to mental retardation, cerebral palsy, epilepsy, autism or what is commonly known as the "fifth category:" "disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature."<sup>2</sup>

Additional information concerning eligibility is found in California Code of Regulations, (CCR), title 17, section 54000(c), which provides that

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<sup>1</sup> Welfare and Institutions Code section 4501.

<sup>2</sup> Welfare and Institutions Code section 4512(a).

handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act. The regulations define “substantial handicap” to mean “a condition which results in major impairment of cognitive and/or social functioning.”<sup>3</sup>

2. CCR, title 17, section 54000 expands WIC section 4512 as follows:

“(a) "Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

- (1) Originate before age eighteen;
- (2) Be likely to continue indefinitely;
- (3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

- (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.
- (2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.
- (3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.”

3. WIC section 4512, subdivisions (1)(1) through (7) and CCR, title 17, section 54001 define substantial disability.

“(a) "Substantial disability" means:

- (1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary

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<sup>3</sup> California Code of Regulations, title 17, section 54001(a).

planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

(d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.<sup>4</sup>

4. Under the definition found in WIC section 4512 and CCR, title 17, section 54000, subdivision (a), Claimant established that she suffers from epilepsy which originated before the age of 18. The next level of analysis is whether her epilepsy constitutes a substantial disability as defined by WIC section 4512, subdivision (l) and CCR, title 17, section 54001.

6. Claimant did not establish that her epilepsy functionally limited her in three or more areas of her major life activities. Her epilepsy has been well controlled since February 2005 when she successfully underwent a left temporal lobectomy. There was no evidence of seizure activity since that surgery. Although Claimant continues to be monitored by her neurologist, the low doses of anti-seizure medication appear to control her epilepsy. The evidence did not establish that Claimant's epilepsy affected her self-care, receptive and expressive language, learning, mobility, or self-direction.<sup>5</sup>

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<sup>4</sup> CCR, title 17, section 54001 is more expansive than WIC 4512.

<sup>5</sup> Due to Claimant's young age, her capacity for independent living and her economic self-sufficiency are not considered age appropriate for this analysis.

7. Claimant did establish that she qualified for special education services under the category of Other Health Impairment-ADHD. She received a diagnosis of learning disorder, not otherwise specified. CCR, title 17, section 54000, subdivision (c), specifically state that handicapping disorders which are solely learning disabilities do not qualify as developmental disabilities under the Lanterman Act.

#### ORDER

The Service Agency's denial of services is affirmed. Claimant is not eligible for services under the Lanterman Act.

DATED: June 7, 2006

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DEBORAH MYERS  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

**This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**